

AMENDED IN SENATE MAY 5, 2014
AMENDED IN SENATE APRIL 21, 2014

SENATE BILL

No. 1328

Introduced by Senator Hill

February 21, 2014

An act to ~~amend~~ *amend, repeal, and add* Section 13350 of, and to add Sections 12022.7 and 13304 to, the Business and Professions Code, relating to weights and measures.

LEGISLATIVE COUNSEL'S DIGEST

SB 1328, as amended, Hill. Weights and measures.

(1) Under existing law, the Department of Food and Agriculture has general supervision of weights and measures and weighing and measuring devices sold or used in the state, and provides that the duty of enforcing and carrying out those provisions is vested with the Secretary of Food and Agriculture and in each sealer acting under the supervision and direction of the secretary. Existing law makes it unlawful for any person to sell poultry or smoked, fresh, frozen, cooked, dried, or pickled meats or fish other than by weight determined at the time of sale on a scale properly sealed in accordance with specified requirements, except as specified. Existing law specifies that fat added to fresh meat or roasts shall not be considered tare weight if the package is labeled as containing added fat. A violation of the provisions, or any regulations adopted pursuant to those provisions, regulating weights and measurements is a crime.

This bill would authorize the secretary, by regulation, to establish a uniform policy consistent with federal law relating to the use of dry tare weight or wet tare weight methods of measurement for the retail sale of meat, poultry, and fish products. Because a violation of a

regulation adopted pursuant to those provisions would be a crime, the bill would impose a state-mandated local program.

(2) Existing law provides the criteria and methodology, as specified, by which local officials are to measure and verify the accuracy of a point-of-sale system used by retail establishments during an initial standard inspection as a means for determining the price of an item being purchased by a consumer. During an initial standard inspection, existing law specifies that only items *displayed or computed by the system* at a higher price than the lowest advertised, posted, marked, displayed, or quoted price shall be considered not in compliance. Existing law authorizes enforcement action to be taken for any item not in compliance.

~~The~~

~~This bill would prohibit~~ *would, until January 1, 2018, provide that a grocery store from being may be issued a written violation but shall not be fined or assessed any other penalty for the first item found to be not in compliance during an initial standard inspection if the grocery store meets specified requirements.*

(3) Existing law authorizes a city or county to license any kind of business, unless prohibited by law, and authorizes the city or county to levy license fees.

This bill would authorize the secretary, by regulation, to impose an additional assessment of up to \$2 for the license of a business that uses a point-of-sale system, to be deposited in the Department of Food and Agriculture Fund, which would be available to the secretary, upon appropriation by the Legislature, for purposes of carrying out the provisions regulating the use of point-of-sale systems.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12022.7 is added to the Business and
2 Professions Code, to read:

1 12022.7. The secretary may adopt regulations consistent with
2 federal law to establish a uniform policy relating to the use of dry
3 tare weight or wet tare weight methods of measurement for the
4 retail sale of meat, poultry, and fish products.

5 SEC. 2. Section 13304 is added to the Business and Professions
6 Code, to read:

7 13304. The secretary may adopt regulations to impose an
8 additional assessment of up to two dollars (\$2), not to exceed the
9 amount necessary to carry out the provisions of this chapter, to
10 obtain a business license for a business that uses a point-of-sale
11 system. The additional assessment shall be deposited in the
12 Department of Food and Agriculture Fund and shall be available
13 to the secretary, upon appropriation by the Legislature, for purposes
14 of carrying out the provisions of this chapter.

15 SEC. 3. Section 13350 of the Business and Professions Code
16 is amended to read:

17 13350. (a) The board of supervisors of any county or city and
18 county that has adopted or that adopts an ordinance for purposes
19 of determining the pricing accuracy of a retail establishment using
20 a point-of-sale (POS) system shall base the initial standard
21 inspection of the POS system on the following criteria:

22 (1) The initial standard inspection shall be performed by
23 collecting a random sample of items that shall include a maximum
24 of 50 percent sale items from either:

25 (A) One department of a retail store.

26 (B) Multiple areas of a retail store.

27 (C) The entire store.

28 (2) The initial standard inspection shall be performed by testing
29 a minimum random sample of 10 items for a retail establishment
30 with three or fewer POS checkout registers.

31 (3) The initial standard inspection shall be performed by testing
32 a minimum random sample of 25 items for a retail establishment
33 with four to nine POS checkout registers.

34 (4) The initial standard inspection shall be performed by testing
35 a minimum random sample of 50 items for retail establishments
36 with 10 or more POS checkout registers.

37 (5) The sealer shall verify that the lowest advertised, posted,
38 marked, displayed, or quoted price is the same as the price
39 displayed or computed by the point-of-sale equipment or printed
40 receipt. Only items computed at a higher price than the lowest

1 advertised, posted, marked, displayed, or quoted price shall be
2 considered not in compliance.

3 (6) The minimum random sample size shall not apply to
4 inspections of any establishment at which fewer items than the
5 number specified as the minimum sample size are marked or
6 displayed with a posted or advertised item price.

7 (7) The maximum percentage of sale item restriction in
8 paragraph (1) shall not apply to inspections of any establishment
9 at which a marketing or promotional practice does not enable the
10 sampling of the minimum required percentage of nonsale items,
11 such as “Everything In Store 50 percent Off” or the like.

12 (8) The compliance rate percentage of a retail establishment
13 shall be determined by dividing the number of items in compliance
14 by the sample size multiplied by 100.

15 (b) Enforcement action may be taken for any item not in
16 compliance.

17 (c) The sealer may reinspect any retail facility that has a
18 compliance rate of less than 98 percent.

19 (d) (1) Notwithstanding any other law, a grocery store that
20 meets the requirements of paragraph (2) *may be issued a written*
21 *violation but* shall not be fined or assessed any other penalty for
22 the first item *found to be* not in compliance during an initial
23 standard inspection.

24 (2) (A) The grocery store has a policy to refund the amount of
25 the product, or to provide the product free of charge, if the amount
26 ~~charged~~ *displayed or computed by the POS checkout register* for
27 the item is greater than the price advertised, posted, marked,
28 displayed, or quoted.

29 (B) The grocery store posts a description of the policy in a clear
30 and conspicuous manner at each *POS checkout location* ~~location~~ *register*.

31 ~~(C) The entire store.~~

32 (3) For purposes of this subdivision, “grocery store” means a
33 full-line, self-service retail store with gross annual sales of two
34 million dollars (\$2,000,000) or more, and that sells a line of dry
35 groceries, canned goods, or nonfood items, and some perishable
36 items.

37 (e) The board of supervisors, by ordinance, may charge a
38 point-of-sale system inspection fee or an annual registration fee,
39 not to exceed the county’s total cost of inspecting or testing the

1 accuracy of prices accessed or generated by the system pursuant
2 to this section.

3 (f) The board of supervisors, by ordinance, may charge a
4 reinspection fee for reinspections of a retail establishment that fails
5 the prior inspection, not to exceed the county's total cost of
6 reinspecting or testing the accuracy of prices accessed or generated
7 by the system pursuant to this section.

8 (g) *This section shall remain in effect only until January 1, 2018,*
9 *and as of that date is repealed, unless a later enacted statute, that*
10 *is enacted before January 1, 2018, deletes or extends that date.*

11 SEC. 4. Section 13350 is added to the Business and Professions
12 Code, to read:

13 13350. (a) *The board of supervisors of any county or city and*
14 *county that has adopted or that adopts an ordinance for purposes*
15 *of determining the pricing accuracy of a retail establishment using*
16 *a point-of-sale (POS) system shall base the initial standard*
17 *inspection of the POS system on the following criteria:*

18 (1) *The initial standard inspection shall be performed by*
19 *collecting a random sample of items that shall include a maximum*
20 *of 50 percent sale items from either:*

21 (A) *One department of a retail store.*

22 (B) *Multiple areas of a retail store.*

23 (C) *The entire store.*

24 (2) *The initial standard inspection shall be performed by testing*
25 *a minimum random sample of 10 items for a retail establishment*
26 *with three or fewer POS checkout registers.*

27 (3) *The initial standard inspection shall be performed by testing*
28 *a minimum random sample of 25 items for a retail establishment*
29 *with four to nine POS checkout registers.*

30 (4) *The initial standard inspection shall be performed by testing*
31 *a minimum random sample of 50 items for retail establishments*
32 *with 10 or more POS checkout registers.*

33 (5) *The sealer shall verify that the lowest advertised, posted,*
34 *marked, displayed, or quoted price is the same as the price*
35 *displayed or computed by the point-of-sale equipment or printed*
36 *receipt. Only items computed at a higher price than the lowest*
37 *advertised, posted, marked, displayed, or quoted price shall be*
38 *considered not in compliance.*

39 (6) *The minimum random sample size shall not apply to*
40 *inspections of any establishment at which fewer items than the*

1 number specified as the minimum sample size are marked or
2 displayed with a posted or advertised item price.

3 (7) The maximum percentage of sale item restriction in
4 paragraph (1) shall not apply to inspections of any establishment
5 at which a marketing or promotional practice does not enable the
6 sampling of the minimum required percentage of nonsale items,
7 such as “Everything In Store 50 percent Off” or the like.

8 (8) The compliance rate percentage of a retail establishment
9 shall be determined by dividing the number of items in compliance
10 by the sample size multiplied by 100.

11 (b) Enforcement action may be taken for any item not in
12 compliance.

13 (c) The sealer may reinspect any retail facility that has a
14 compliance rate of less than 98 percent.

15 (d) The board of supervisors, by ordinance, may charge a
16 point-of-sale system inspection fee or an annual registration fee,
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18 accuracy of prices accessed or generated by the system pursuant
19 to this section.

20 (e) The board of supervisors, by ordinance, may charge a
21 reinspection fee for reinspections of a retail establishment that
22 fails the prior inspection, not to exceed the county’s total cost of
23 reinspecting or testing the accuracy of prices accessed or
24 generated by the system pursuant to this section.

25 (f) This section shall become operative on January 1, 2018.

26 ~~SEC. 4.~~

27 SEC. 5. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.